

Attorney Docket No.: 67110070.1003
Serial No. 09/379,439

REMARKS

Claims 1-54 are pending in the above-identified application. Claims 1-3, 5-50, 52 and 53 stand rejected under 35 U.S.C. §102. Claims 4 and 54 stand rejected under 35 U.S.C. §103. Applicants respectfully traverse for at least the reasons stated below. The Office Action does not state a rejection with respect to claim 51 and Applicants submit that this claim is in condition for allowance.

I. REJECTION UNDER 35 U.S.C. §102

The Office Action states that claims 1-3, 5-50, 52 and 53 are anticipated because Albert teaches a target irradiation system. Albert, however, fails to disclose each and every limitation disclosed in the present claims. The disclosure in Albert is limited to a system that produces an x-ray fluorescence spectrum from an x-ray source. Specifically, Albert does not disclose "a target object capable of becoming radioactive upon receiving the emitted x-rays," which is a limitation set forth in claim 1 (and 2, 3, 5-50, 52 and 53 by its dependency from claim 1).

Albert describes the emission of x-ray fluorescence spectra useful in fingerprinting the chemical composition of a sample being analyzed. In Albert, the sample does not become radioactive. Instead, it emits a spectrum of x-ray fluorescence upon being bombarded by an x-ray source as the sample returns from an excited state to its ground state. At the end of the x-ray fluorescence analysis, the sample is non-radioactive and the sample material in its unexcited state. The unique fluorescence spectra aids in identification of the chemical composition of the analyzed sample. Nowhere does Albert disclose a target object becoming radioactive. Without teaching this limitation, Albert cannot anticipate claims 1-3, 5-50, 52 and 53. Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

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II. REJECTION UNDER 35 U.S.C. §103

The Office Action further states that claims 4 and 54 are unpatentable over Albert in view of Fischell because it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to substitute Albert's secondary target with Fischell's stent in order to produce radioisotope material. As noted above, Albert does not disclose "a target object capable of becoming radioactive upon receiving the emitted x-rays," as required by claims 4 and 54. In addition to the deficiencies noted above, substituting an implantable object for the secondary target would not produce radioisotope material or make the device radioactive. At most, depending on the material of the implantable object, irradiation by the x-ray source in Albert "fluoresces the specific characteristic wavelength spectrum of the element of which the secondary target [stent] is composed." (Albert, col. 7, ln. 3-10.)

The Examiner further states that one would be motivated to substitute the final target (61) of Albert with any material because it would produce a fluorescent x-ray source which can be inserted in the body of an animal (citing Fischell). One of ordinary skill in the art would understand that x-ray fluorescence is not a radioactive property, and one would not use an x-ray source in an x-ray fluorescence spectrometry system to make a target object radioactive upon receiving x-rays from the x-ray fluorescence spectrometry system.

Neither Albert nor Fischell disclose, teach or suggest a target object capable of becoming radioactive upon receiving emitted x-rays. Without this limitation, the combination of Albert and Fischell do not render claims 4 and 54 obvious. Applicant respectfully requests that objection on this basis be reconsidered and withdrawn.

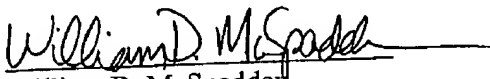
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CONCLUSION

In view of the foregoing arguments, Applicants respectfully submit that pending claims 1-54 are in condition for allowance. This Amendment and Response to Office Action cancels no claims and adds no new claims. Accordingly, no claims fees are required by the filing of this document. In the event, however, that any fees are required to cover the cost of this filing, the Commissioner is authorized to charge those fees, or credit any overpayment, to Account No. 13-0480, Attorney Docket No. 67110070.1003.

If Examiner has any questions regarding this Amendment and Response to Office Action or the Application in general, Examiner is invited to contact Applicants' attorney at the below-listed telephone number.

Respectfully submitted,


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